IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4706 OF 2004

Mr.Prabhalkar Sitaram Mulekar. Petitioner

Vs.

Ms.Sumati Ranganath Deshpande. Respondent

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Shri Vasant Shelke i/b M/sDivekar & Co. for the petitioner.

CORAM : R.M.S.KHANDEPARKAR, J

DATED : 21st September, 2004.

P.C.

1. Heard the learned advocates for the parties.

Perused the records.

2. The petitioner challenges the judgment and order passed by the lower appellate Court on 17th September, 2002 in Appeal No.517 of 2001 thereby setting aside the decree of eviction passed by the trial Court on 14th February, 2001 in L.E.& C.Suit No.268/301 of 1990. The suit was filed for eviction of the respondent on the ground that she was purely inducted as paying guest on the basis of the gratuitous consideration and without any liability to pay license fee, and that the same was terminated by

issuing proper notice. The respondent however had contended of being a protected licensee and being not entitled to be evicted since she had acquired the said protection in terms of Section 15A of the Bombay Rents, Hotel Lodging House Rates Control Act, 1947 being in possession of the premises as protected paying guest on 1st February, 1973. The lower appellate Court while allowing the appeal clearly observed that it was the case of the petitioner that the respondent was inducted in the premises in the year 1961. However, the petitioner had sought to establish his case by examining his nephew Sanjiv, who was undisputedly born on 23rd March, 1955. Being so, he was hardly of six years of age at the time when the respondent was stated to have been inducted in the premises. Obviously, he could not have personal knowledge of the terms and conditions on which the respondent was inducted in the premises. Apart from such untrustworthy evidence, the lower appellate court also observed that the husband of the respondent had already filed declaratory suit claiming to be a tenant in respect of the premises. The trial Court had decreed the suit merely on account of failure on the part of the respondent to enter the witness box. It is well settled that the plaintiff has to stand on his own case and mere weakness in defence case cannot, by itself, enure to the benefit of the plaintiff to get

favourable decree. In other words, the plaintiff has to establish his own case by producing cogent evidence in order to obtain favourable decree. Mere failure on the part of the defendant cannot itself lead to the conclusion that the plaintiff has established his case. Considering this well established principles of law, no fault can be found with the findings of the lower appellate Court thereby setting aside the decree passed by the trial Court solely on the ground of failure on the part of the respondent to lead evidence. The analysis of the materials on record by the lower Appellate Court discloses that the approach on the part of the trial Court in the matter of evidence was totally perverse and in as much as that the finding arrived at about the establishment of the case in favour of the petitioner was on the basis of untrustworthy evidence and merely because there was failure on the part of the respondent to lead evidence. In the circumstances, therefore, no fault can be found with the impugned order nor it discloses any illegality and hence, it does not call for any interference in writ jurisdiction. Hence, the petition fails and is accordingly rejected.